estates" which include land and are distributable by Collectors under Chapter XIX of the Probate and Administration Enactment may be excepted.

His argument involves the proposition that the words ".... for the administration by the Court of an estate..." are equivalent to ".... for a grant of letters of administration of the estate." He attempted to support this construction by saying that the words of the statute as they stand are ungrammatical; that the words "by the Court" are an adverbial phrase qualifying the words "order for the administration of the estate" and that these words cannot refer to the word "administration" which is part of an adjectival phrase. He also referred to section 4 (i) (a) and (c) but these do not carry the matter any further because both are "subject to the other provisions of the Enactment."

In my opinion section 6 (i) is perfectly clear. If the legislature had meant "any person entitled to apply for letters of administration" they could, and obviously would, have said so. If they had meant an official to administer without a grant they could, and would, have said so plainly, as in section 46 of the Police Force Enactment. The phrase "administration by the Court" is a familiar one and refers to an administration action which arises only after a grant of representation has been issued. That is emphasised by rule 11 (2) which expressly requires the Public Trustee, when acting under section 6 (i), to call in the pre-existing grant.

Mr. Neal said that the course followed in this case was traditional in his office. This is perfectly true. It already existed in 1935 when the then Public Trustee of the Federated Malay States told me that, as he put it, "he could give letters of administration to himself." I have little doubt that the practice originated with one of the early Public Trustees, most of whom were laymen. The expression "administration by the Court" meant nothing to him, familiar though it is to lawyers, and he simply assumed or pretended that it was equivalent to "grant of letters of administration" because that interpretation enabled him to save the small amount of time and work involved in lodging an ordinary petition. If he had had any relevant experience he would have known that on a long view that interpretation would involve his department in serious difficulties. For one thing it wholly evades the liability for estate duty but I imagine that some departmental arrangement was made under which the duty is in fact collected though there is no legal machinery for it. The greatest danger is that money may be paid to someone who is not entitled to it and it is odd that this malpractice has persisted for so long without a fraud coming to light.

In the days when there was no separate Public Trustee for the Colony, this heretical practice was followed in Singapore in about a dozen cases and at least one of them led to serious difficulty and some unnecessary expense, although no part of the corpus was lost. I do not think that section 6 (i) has ever been construed by the Court but in 1939 the Law Officers of the Colony took the view which I have expressed and on several occasions lawyers in private practice advised in the same sense.

The Public Trustee has no power to administer without a grant. In this case he is an administrator *de son tort* and has no *locus standi* to apply to the Court. Mr. Neal pointed out, quite correctly, that the application is, in several other respects, misconceived so there is no question of adjournment or rectification. The summons is dismissed with costs. The Court cannot allow the costs of such proceedings to be taken out of the estate.

Summons dismissed.

In re MARK JOHNSON, DECEASED.

[Orig. Civ. Juris. (Taylor, J.) September 11, 1950]

[K. L. — Petition for Letters of Administration No. 167 of 1950]

Public Trustee — Whether authorised to petition for letters of administration.

This was a petition by the Public Trustee for letters of administration of the estate of one Mark Johnson, who died at Seremban leaving a bank account and other assets. He was, apparently, unmarried but is survived by his parents who reside in England and it is alleged that the father of the deceased has, by a letter, requested the Public Trustee to administer the estate. The Registrar doubted whether the Public Trustee had any right to be the petitioner in such a case and referred the matter to a Judge for this point to be argued.

Held, that the Public Trustee is not authorised by statute to petition for letters of administration.

PETITION for letters of administration.

The Public Trustee (M. Neal) in person.

Taylor, J. : — This was a petition by the Public Trustee for letters of administration of the estate of one Mark Johnson, who died at Seremban leaving a bank account and other assests. He was, apparently, unmarried but is survived by his parents who reside in England and it is alleged that the father of the deceased has, by a letter, requested the Public Trustee to administer the estate. The Registrar doubted whether the Public Trustee had any right to be the petitioner in such a case and referred the matter to a Judge for this point to be argued.

The learned Public Trustee, Mr. Neal, appeared in person. He said at once that there is no section or rule which expressly gives the Public Trustee a right or power to petition. His argument was that by section 8 (ii) of the Public Trustee Enactment the Public Trustee and the family are equally entitled to obtain a grant of administration and that an equal right to petition is necessarily implied.

This argument is incorrect. A statutory corporation has no powers except those conferred upon it by the statute.

The power to receive a grant is one thing. The right to initiate proceedings is another. The latter is not implied. This is made particularly clear by sections 23 and 25 of the Probate and Administration Enactment where the power to petition for, and the power to receive, a grant of representation are conferred separately and expressly.

There is no reason why a right to petition should be given. It would rarely be of real use and would sometimes be dangerous. No inconvenience results from its absence. The proper and entirely satisfactory procedure is for the widow or next-of-skin to lodge a petition for a grant to the Public Trustee, with his consent, the petition may still be prepared in his office. The essential difference is that the facts are proved by someone who has personal knowledge of them. The Public Trustee is rarely in a position to prove them and and if weak evidence is acted on in such matters, then sooner or later substantial sums will be paid out to the wrong persons.

In a case where no member of the family is resident in Malaya the petition can be filed by an attorney; nothing in this judgment affects the question whether the Public Trustee can petition in the capacity of an attorney.

This petition is incompetent and ought to be dismissed but at the conclusion of the argument Mr. Neal pointed out that the deceased in this particular case was a public servant so that the defect might be curable under section 25 of the Probate and Administration Enactment. The petition was therefore adjourned generally for this suggestion to be considered.

Petition adjourned generally.

WOON ONN v. TAN YEE GEK (f).

[App. Civ. Juris. (Spenser-Wilkinson, J.) August 3, 1950]

[Raub — Civil Appeal No. 2 of 1950]

Landlord and tenant — Control of Rent Ordinance, 1948, ss. 3(4), 12 and 14 — Rent at a lawful rate in arrears for fourteen days.

In this case the claim was by a landlord to eject a tenant after the expiration of a notice to quit, the claim being brought without the previous permission of the Rent Board on the ground that rent at a lawful rate had been in arrears for fourteen days under the proviso to section 12 of the Control of Rent Ordinance, 1948.

The main defence to which the evidence of the defendant was directed during the trial was that there had been a tender. The learned President disbelieved the evidence of the defendant and his witness on this point and found as a fact that there had been no tender. The appellant on the appeal raised what was, in effect, a new point of law, although it arose from facts put in evidence at the hearing. The amount of rent which the tenant had been paying to the landlord for a considerable period was $60/- per month. In fact, however, the standard rent of the premises was only $35/- per month as appears from the findings of the Rent Board on an application for reduction of rent which was made before the issue of the plaint in this case but after the notice to quit had been given. As appears from his grounds of judgment the learned President accepted the finding of the Board on this question of the standard rent.

Held, that upon the facts which were before the learned President he should have held that a rent at a lawful rate had not been in arrear and that the proviso to section 12 of the Control of Rent Ordinance, 1948, did not, therefore, apply and he should have dismissed the plaintiff's claim.

CIVIL APPEAL from Sessions Court, Raub.

A. K. Sen for the appellant.

A. J. Bostock-Hill for the respondent.

Spenser-Wilkinson, J. : — The claim in this case was by a landlord to eject a tenant after a notice to quit, the claim being brought without the previous permission of the Rent Board on the ground that rent at a lawful rate had been in arrears for fourteen days under the proviso to section 12 of the Control of Rent Ordinance, 1948.

The main defence to which the evidence of the defendant was directed during the trial was that there had been a tender. The learned President disbelieved the evidence of the defendant and his witness on this point and found as a fact that there had been no tender. I see no reason to disturb the finding of the learned President on this question of fact which he decided after seeing and hearing the witnesses.

The appellant on the appeal raised what was, in effect, a new point of law, although it arose from facts put in evidence at the hearing. The amount of rent which the tenant had been paying to the landlord for a considerable period was $60/- per month. In fact, however, the standard rent of the premises was only $35/- per month as appears from the findings of the Rent Board on an application for reduction of rent which was made before the issue of the plaint in this case but after the notice to quit had been given. As appears from his grounds of judgment the learned President accepted the finding of the Board on this question of the standard rent.